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Attorney for Plaintiff, JAMES M. KINDER, an individual

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

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| JAMES M. KINDER,<br><br>Plaintiff,<br><br>v.<br><br>HARRAH'S ENTERTAINMENT, Inc. and DOES 1 through 100, inclusive,<br><br>Defendants. | Case No. 07 CV 2226 DMS (AJB)<br><br>Judge: Hon. Dana M. Sabraw<br>Magistrate: Hon. Anthony J. Battaglia<br><br>**DECLARATION OF CHAD AUSTIN IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**<br><br>Date: January 7, 2008<br>Time: 10:30 a.m.<br>Courtroom: 13 |

I, CHAD AUSTIN, declare as follows:

1. I am an attorney at law duly licensed and admitted to practice before all courts of the State of California, the United States District Court, Southern District of California and the Ninth Circuit Court of Appeals and have been attorney of record for Plaintiff in this matter since its inception. If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated on information and belief.

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2. I am fully familiar with all of the facts and circumstances surrounding this case. This declaration is submitted in support of Plaintiff's Opposition to Defendant's Motion to Dismiss. The matters stated in this declaration are true, of my own personal knowledge.

3. Plaintiff has in his possession and I have personally listened to the tape recordings of each and every call (7 in total) made by Defendant to Plaintiff's number assigned to a paging service 619-999-9999, a San Diego, California number.

4. One (1) of the unlawful prerecorded telemarketing calls complained of in this action, which was made on December 9, 2003 at 10:19 a.m., was what clearly appeared to be a prerecorded telemarketing call. The prerecorded message stated that it was made on behalf of "Harrah's Rincon Casino," located in Valley Center, San Diego County, California. My investigation has revealed that the Harrah's Rincon Casino is owned by the Rincon band of Mission Indians and operated by one or more of several Harrah's entities, including but not necessarily limited to defendant HARRAH'S ENTERTAINMENT, Inc. (a Delaware corporation), HARRAH'S OPERATING COMPANY, Inc. (a Delaware corporation), HARRAH'S MARKETING SERVICES CORPORATION (a Nevada corporation) and HARRAH'S LICENSE COMPANY, LLC (a Nevada limited liability company). However, discovery will ultimately be required in order to determine exactly which Harrah's entity operates the Harrah's Rincon Casino. A true and correct verbatim transcript of the December 9, 2003 at 10:19 a.m. call is attached hereto as Exhibit B.

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5. One (1) of the unlawful prerecorded telemarketing calls complained of in this action, which was made on February 15, 2007 at 2:53 p.m., included what clearly appeared to be a man's prerecorded voice. The prerecorded voice message promoted the Harrah's Las Vegas Casino. The gentleman said in the prerecorded message that he was "Scott with **Harrah's Entertainment**." A true and correct verbatim transcript of that prerecorded message is attached hereto as Exhibit C.

6. On December 11, 2007, I accessed the website for the North County times and found an article entitled "Gambling growth could lead to unfriendly competition," a true and correct copy of which is attached hereto as Exhibit D, which stated, *inter alia*, "**Rincon**, which has partnered with Las Vegas giant **Harrah's Entertainment**, has said that its casino with 1,600 slot machines can't compete with its neighbors without more slots."

7. On December 3, 2007, I accessed the Harrah's website. Specifically, under "CORPORATE : INVESTOR RELATIONS – PROPERTY STATS" [http://investor.harrahs.com/[phoenix.zhtml?c=84772&p=irol-PropertyStats], I found a listing of properties and various statistics related thereto. At the top of the table read "**HARRAH'S ENTERTAINMENT** › INVESTOR RELATIONS › **PROPERTY STATS**." [bold and underlining of "HARRAH'S ENTERTAINMENT" added for emphasis]. The subheading read "STATISTICAL DATA AS OF JUNE 30, 2007." One of the entries in that table related to "Rincon," referring to Harrah's Rincon Casino. According to the table, Harrah's Rincon Casino has 61 table games, 12 poker tables, 1,600 slot machines, 69,949 square feet of casino, 552 hotel

rooms (non-suite), 101 hotel suites, 653 total rooms/suites and 7,648 convention center square feet. A true and correct copy of the website printout is attached hereto as Exhibit E.

8. On or about December 11, 2007, I accessed, via the internet, the document a true and correct copy of which is attached hereto as Exhibit F. The document, entitled "Capturing the Benefits of Casino Gaming: An Economic Development Initiative for Rhode Island Submitted by **Harrah's Entertainment, Inc.** to the Rhode Island Special House Commission to Study Gaming, March 14, 2003" [http://www.rilin.state.ri.us/gen_assembly/gaming/whiteversion.doc] was accessed by me on the State of Rhode Island General Assembly's website, http://www.rilin.state.ri.us/gen_assembly/. In that document appeared the following language: "In December 2002, **Harrah's Entertainment, Inc. ("Harrah's")**, the owner/operator of 26 casinos in 13 states, announced a partnership with Rhode Island's Narragansett Tribe…" (Page 1, third full paragraph). On Page 10 of that document, in the third paragraph, was the following language: "**Harrah's has witnessed it on tribal lands with the** Ak Chin Indian reservation outside of Phoenix, the Cherokee reservation in North Carolina, the Prairie Band of Pottawatomi Indians in Kansas **and the Rincon band of Mission Indians outside of San Diego. And, the same can be said for Harrah's *other* properties** in Missouri, Louisiana, Atlantic City, New Jersey, Nevada, and Iowa." [Bold and italics added for emphasis.]

9. On December 20, 2007, I accessed the website for Harrah's Rincon Casino in Valley Center, San Diego County, California. [http://www.harrahs.com/casinos/harrahs-rincon-san-diego/hotel-casino/property-home.shtml] In the window in the top, center of the page

immediately read **"Harrah's Entertainment ® Loading Content."** The window then said **"Las Vegas Action, San Diego Style!"**

10. It is absolutely untrue that Plaintiff filed a "Declaration of James M. Kinder in Support of Filing By Vexatious Litigant in" in *James M. Kinder v. Sprint PCS Assets, LLC, et al.*, United States District Court, Southern District of California, Case No. 07CV2049 WQH JMA. No such declaration was filed in that case.

11. It is true that, in some previous TCPA matters, I filed Declarations by my client to support the initial complaint filed therewith. That is because the clerk's office at the San Diego Superior Court ("civil business office") erroneously required same before they would accept a new filing. After jumping through the unnecessary hoop several times, as in *James M. Kinder v. Allied Interstate*, San Diego Superior Court Case No. GIC 850543, which filing was approved by then Presiding Judge Janis Sammartino on February 26, 2007, the civil business no longer required my client to submit a declaration to be approved by the Presiding Judge. At some point on a date I cannot recall, a clerk with the court stated that the Court's in-house legal department had advised them that as long as my client filed through counsel, no approval from the Presiding Judge was necessary. Since then, no such approval has been required by the court in any new filing by Mr. Kinder, whether the action was for violations of the TCPA or not.

12. The fact that no court approval should have ever been required when my client filed through counsel was ratified by then Presiding Judge Sammartino on June 28, 2007. In

*James M. Kinder v. Adecco, Inc.*, San Diego Superior Court Case No. GIC882000, Adecco filed a Notice of Vexatious Litigant, affecting an automatic stay of that litigation. I timely filed an opposition and Judge Sammartino lifted the stay, holding that the pre-filing order and CCP § 391.7 did not apply because Mr. Kinder had filed that action through counsel and not *In Propria Persona*. A true and correct copy of Judge Sammartino's Order is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the State of California and the laws of the United States that the foregoing is true and correct and that this declaration was executed by me on December 21, 2007 in San Diego, California.

DATED: December 21, 2007

By: /s/ Chad Austin
CHAD AUSTIN, Esq., Attorney for Plaintiff, JAMES M. KINDER
Email: chadaustin@cox.net